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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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January 22, 2001

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S. W.
Washington, DC 20554

Re: Memorandum of Ex Parte Presentation in
CC Docket Nos. 96-45, 96-98, 98-77, 98-166, 99-68, 00-256

Dear Ms. Salas:

On January 19, 2001, Mr. Jay Preston, Jr. and Ms. Cynthia Preston of Ronan Telephone Company ("Ronan"), and Ivan C. Evilsizer, James U. Troup and James H. Lister, attorneys for Ronan, met with the following members of the Commission staff:

| NAME | BUREAU |
|---|---|
| Carol Mattey | Deputy Bureau Chief<br>Common Carrier Bureau |
| Andrew Mulitz | Legal Branch Chief<br>Accounting Safeguards Division<br>Common Carrier Bureau |
| Richard Lerner | Deputy Chief<br>Competitive Pricing Division<br>Common Carrier Bureau |
| William Scher | Staff Attorney<br>Accounting Policy Division<br>Common Carrier Bureau |

We discussed the FCC's symmetry rule for pricing reciprocal compensation, 47 CFR Sec. 51.711. We explained Ronan's position that paragraph 1088 of the FCC's 1996 Interconnection Order, 11 FCC.Rcd. 15499, excuses from the application of the symmetry rule rural telephone companies holding the Section 251(f)(1) or (f)(2) exemption. We noted OPASTCO's written support for this position (see attached handout).

We discussed Ronan's position regarding the need for modification to the MAG Plan, so that a greater portion of carrier revenues would come from customers rather than universal service support, which may be the target of future political attack We also discussed proposed modifications to universal service mechanisms for rural telephone companies and urged the Commission to ensure that the final mechanism adopted provides sufficient universal service support for small rural companies. Finally, we discussed the abusive use of universal service money by some rural ILECs, who use USF support to cross-subsidize ventures into the territories of neighboring ILECs which receive far less USF support or no USF support and so are at a competitive disadvantage. We urged the Commission to end this abuse, so that neighboring ILECs may compete in each other's service areas on a level playing field.

At the meeting, we distributed two handouts. They are attached to this letter. We summarized the contents of the attachments.

To permit the filing of two-copies in the above-reference docket, an original and eleven (11) copies of this letter and attachments are provided. Also enclosed is an extra copy, which I ask you to stamp as received and return for our records.

Sincerely yours,

James U. Troup
James H. Lister

cc: Carol Mattey
Andrew Mulitz
Rich Lerner
William Scher

288109

# MEETING WITH RONAN TELEPHONE COMPANY
# JANUARY 19, 2001

1. Introduction

Ronan Telephone Company (RTC) is a small, family-owned local telephone company providing service to rural Montana.

Completely on Flathead Indian Reservation (implementing enhanced Lifeline program).

Losing prime customers to neighboring LECs
- (i) Century Tel to the north
- (ii) Blackfoot on the south (not a Native American company)[1]
  - Receives 8x the USF as RTC per customer
  - Is largely Tax Exempt (5% v. 40%)
  - Is exempt from all state regulation
  - Has capacity on a fiber optic line which traverses the main business district of Ronan acquired by trading fiber purchased with subsidies intended for their members.

2. Universal Service

RTC is national test case for the development of competition and the protection of universal service: Use of USF by a tax exempt unregulated entity to heavily subsidize inefficient cream skimming, and leaving the incumbent RTC left to satisfy its universal service responsibilities to the remaining residential and financially stressed agricultural areas on the Reservation with stranded plant, loss of its best customers which support lower rates for rural subscribers (loss of 10 customers would double or triple rates).

RTC (i) receives one-eighth the USF support that its competitors receive.
- (ii) is subject to full rate and service regulation by the state PSC
- (iii) is subject to full tax rates
- (iv) Bill-and-keep gives away access to RTC's infrastructure, and in fact subsidizes its already heavily subsidized competition even further.

RTC has two major pending cases before the state PSC and one case in state district court.
- (i) Reciprocal Compensation Rates

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1 Contrary to the sound of its name, Blackfoot is a member owned cooperative named after the Blackfoot Valley/River 200 miles from the Blackfoot Indian reservation, and which has only a small number of tribal customers on the Flathead Reservation which borders a portion of their service area.

(ii) Misuse of USF to fund and cross subsidize competition

(iii)Appeal of Rural Exemption 251(f)(2) by MPSC which interpreted the Act to disallow evidence on impacts of telecom users and the public interest, and ignored overwhelming public interest testimony.

This is a perverted and economically inefficient application of the existing subsidy mechanisms, recip. comp rules, and the tax and regulatory preferences of cooperatives, which is being used to damage the rural ratepayer, and destroy any incentive for a private rural company like RTC to invest any further in the wireline infrastructure.

Specific Issues:

A. Misuse of USF: outside study area (47 USC 254)

B. Reciprocal Compensation

Symmetry Rule

Request for 1088 clarification - Rural companies exempt from 57.111

OPASTCO Letter

Bill & Keep and pending FCC Docket:

B&K Inappropriate and illegal unless both costs and traffic equivalent

Inconsistent with 252(d)(2) and Taking clause

Fails to compensate for the investment in the existing wireline infrastructure and thereby support universal service through equitable cost compensatory mechanisms.

C. Cherry Picking and rural rate impacts

3. MAG PLAN Critique

Contrary to Universal Service goals for rural America

Fails to compensate rural companies - 1.6 (MAG) v. 8 cents based on FCC cost study.

Increases subsidies

Decreases Affordability (SLC), (on the reservation)

4. Requested FCC Action

A. Letter confirming the rural telephone company exemption from the symmetry rule.

B. Eliminate USF for ILECS that have CLEC or wireless operations.

288528

ATTACHMENT 2

ORGANIZATION
FOR THE PROMOTIO
AND ADVANCEMENT
OF SMALL
TELECOMMUNICATIO
COMPANIES

OPASTCO

January 17, 2001

Jay Wilson Preston
President
Ronan Telephone Company
312 Main St. SW
Ronan, Montana 59864

**RE: OPASTCO Support to seek FCC Staff Opinion**

Dear Mr. Preston:

This letter is to confirm the affirmative vote of the OPASTCO Board of Directors at the meeting on January 13, 2001, to support you in seeking an informal staff opinion from the FCC clarifying the meaning of Paragraph 1088 of the 1996 FCC Interconnection Order (96-325). The OPASTCO Board concurs with you that a clarification of the rural exemption's applicability to the symmetry rule will benefit rural ratepayers.

Specifically, Paragraph 1088 of Order 96-325 gives the FCC's reasons for adopting a strong presumption in favor of symmetrical reciprocal compensation arrangements for some LECs (47 CFR Sec. 51.711, and generally Sections 51.701-51.717). Paragraph 1088 also states:

> 1088. . . . We also note that <u>certain small incumbent LECs are not subject to our rules under Section 251(f)(1) of the Act</u>, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from state commissions from our rules under section 251(f)(2) of the 1996 Act . . . . FCC Order 96-325, Paragraph 1088 (emphasis added)

The Board agrees that an informal FCC staff opinion is appropriate to confirm that this language was intended to clarify that rural LECs (those with the 251(f)(1) exemption) are exempt from the symmetry presumptions in 51.711. This clarification is necessary to ensure the proper application of Section 252(d)(2) of the Telecommunications Act; namely, to determine the appropriate and mutually compensatory local reciprocal compensation rates for local interconnection.

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This is particularly important in sparsely populated rural areas, where the costs to provide rural universal service greatly exceed the costs incurred by a new entrant to serve only a few selected lucrative large customers. Where rural competition develops, it is vital to strictly apply the clear language of Section 252(d)(2)[1] to assure the protection of affordable rates for the vast majority of rural consumers that are very unlikely to be served by the new entrant.

The FCC should affirm that state commissions must equitably exercise their discretion on a case by case basis in applying Section 252(d)(2) to rural competitive situations when setting reciprocal compensation rates. This is necessary to protect the vast majority of rural ratepayers (including, for example, the Native American population in your exchanges, particularly those families with low incomes) from rate increases caused by unfair competition and cherry-picking, and to discourage inefficient, subsidized, cream-skimming that is contrary to the public interest.

This issue is important to the OPASTCO membership, and is consistent with the comments filed by OPASTCO in 1996 (filed jointly as a member of the Rural Telephone Coalition) prior to the issuance of Order 96-325. You are hereby authorized to present this letter of support from OPASTCO to the FCC and to communicate OPASTCO's support when you request an informal FCC staff opinion to confirm that the 251(f)(1) rural exemption exempts rural telephone companies from 47 CFR§51.711.

Sincerely,

Robert T. Miles
Chairman
OPASTCO

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[1] "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

(i) such terms and conditions provide for the mutual and reciprocal recovery <u>by each carrier</u> of costs associated with the transport and termination <u>on each carrier's network facilities</u> of calls that originate on the network facilities of the other carrier; . . ." 47 U.S.C. Sec. 252(d)(2) (emphasis added)